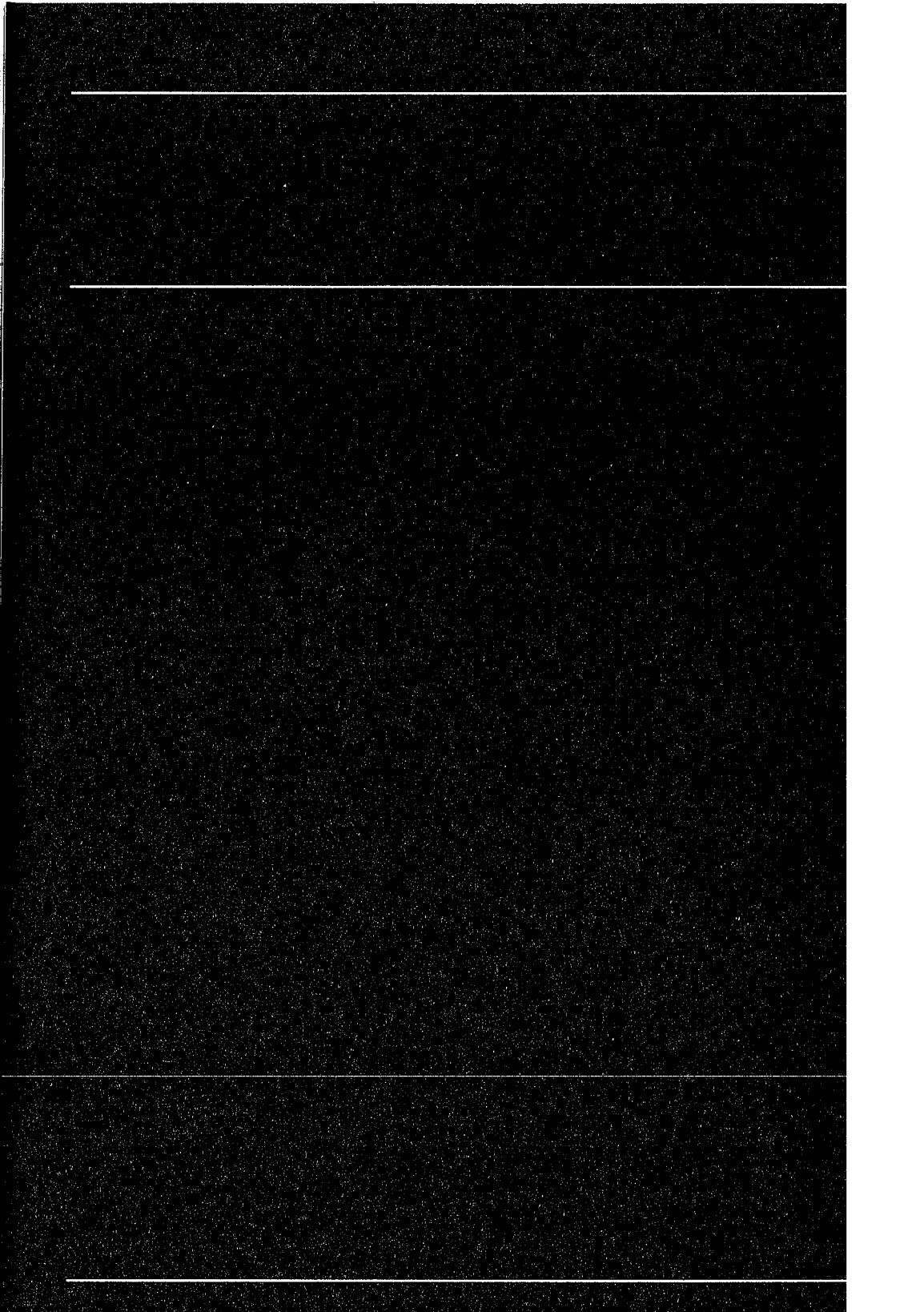


GAO

December 1994

**Digests of Decisions
of the Comptroller
General of the
United States**



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Preface

This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act of 1921. A disbursing or certifying officer or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S.C. § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S.C. § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition In Contracting Act, Pub. L. No. 98-369, July 18, 1984. Decisions in this pamphlet are presented in digest form. When requesting individual copies of these decisions, which are available in full text, cite them by file number and date, e.g., B-257405, Sept. 30, 1994. Approximately 10 percent of GAO's decisions are published in full text as the Decisions of the Comptroller General of the United States. Copies of these decisions are available in individual copies and in annual volumes. Decisions in these volumes should be cited by volume, page number, and year issued, e.g., 72 Comp. Gen. 347 (1993).

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Appropriations/Financial Management

B-257120, December 13, 1994

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Physical losses

Accountable officer who left money under vehicle seat was negligent and thus may not be relieved of liability for the theft of those funds from the vehicle.

B-236055.3, December 15, 1994

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Physical losses

IRS service center director is relieved of liability under 31 U.S.C. § 3527(a) for a loss of \$25,400. The taxpayer check was lost due to a "piggy-back" error and both the depository and payor banks failed to provide the service center with deposit information necessary to locate the missing amount.

B-258735, December 15, 1994

Appropriations/Financial Management

Accounting Officers

- Liability
- ■ Statutes of limitation
- ■ ■ Effective dates
- ■ ■ ■ Illegal/improper payments

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Illegal/improper payments
- ■ ■ Agency request
- ■ ■ ■ Submission time periods

Air Force Accounting and Finance Officer's account is settled by operation of law upon running of the three-year statute of limitations in 31 U.S.C. § 3526. Air Force did not timely submit the irregularity and the request for relief to GAO. However, because Air Force determined, prior to the expiration of

the three-year period, not to seek relief for an acting financial officer and cashier who were involved in the irregularity, Air Force should continue to pursue collection action against them.

B-253292, December 30, 1994***

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ User fees
- ■ ■ Overtime
- ■ ■ ■ Customs inspectors

User fees are not available under 19 U.S.C. § 58c(f)(3)(A)(i) to finance the costs of inspection overtime services in the U.S. Virgin Islands. Because the Virgin Islands are not included in the customs territory of the United States, the fees are not assessed in the Virgin Islands. Consequently, the cost of inspectional overtime services in the Virgin Islands should be deducted from customs duties collected for the Virgin Islands. User fees are available under 19 U.S.C. § 58c(f)(3)(A)(i) to defray the costs of inspectional overtime services in the Commonwealth of Puerto Rico. Section 58c(f)(3)(A)(i) fees are assessed in Puerto Rico, a part of the U.S. customs territory.

Civilian Personnel

B-258275, December 1, 1994

Civilian Personnel

Compensation

- Substitute checks
- ■ Theft

A claim may not be allowed for the amount of a U.S. Treasury check a State Department employee received at her overseas duty station, and endorsed for deposit and sent via the Department's diplomatic pouch to her credit union in the U.S. The check was not deposited in her credit union account but apparently was lost or stolen en route, and it was cashed in a foreign bank. Treasury Department determined that a replacement check may not be used because the government is not liable for the wrongly cashed check. Neither is there any authority under which GAO may allow payment.

B-258059, December 6, 1994

Civilian Personnel

Travel

- Overseas travel
- ■ Foreign air carriers
- ■ ■ Use
- ■ ■ ■ Prohibition

Flights provided by a foreign air carrier which issues the tickets in its name under its flight number and takes responsibility for the passengers but performs the service under a wet-lease from a U.S. air carrier in which the U.S. carrier furnishes the airplane, flight crew, ticket counter, and gate and ramp personnel to the foreign air carrier, may not be considered to be flights "provided by" a U.S. air carrier under the Fly America Act, formerly 49 U.S.C. App. § 1517 (1988), recodified in 49 U.S.C. § 40118.

B-257669, December 8, 1994

Civilian Personnel

Compensation

- Employment status
- ■ De facto employment

The Ambassador, United Nations Human Rights Commission, who was appointed by the President subsequent to his travel to Geneva, Switzerland, to participate in Commission meetings, is not entitled to compensation from the State Department as a *de facto* employee for the 3-week period prior to his

appointment, since he has not met his burden of proof and furnished evidence which would show that he served under color of authority.

B-258292, December 20, 1994

Civilian Personnel

Relocation

■Residence transaction expenses

■Leases

■Termination costs

■Reimbursement

An employee received written confirmation of her transfer on December 16, 1991, and her travel orders on December 30, 1991. She was required to report to her new duty station on January 8, 1992. She could not move before January 6, 1992, and the landlord insisted on the terms of the lease requiring at least 30 days' notice of leaving. In view of the short time period involved, the rent which she had to pay for January 1992 may be considered as a lease termination expense reimbursable under 41 C.F.R. § 302-6.2(h) (1991).

Military Personnel

B-257580, December 27, 1994

Military Personnel

Pay

■ Variable housing allowances

■■ Eligibility

Where member is resident curator of state historical site and has agreed to restore site with own funds in exchange for right to reside at site, such expenses are properly considered "monthly housing costs" for calculation of Variable Housing Allowance under 37 U.S.C. § 403a.

B-258310, December 28, 1994

Military Personnel

Pay

■ Survivor benefits

■■ Annuities

■■■ Eligibility

■■■■ Former spouses

Former spouse election under Survivor Benefit Plan (SBP) is valid even though request for election was filed on Open Season election form (DD Form 2618) rather than forms for SBP Election Change and Election Statement for Former Spouse Coverage because submitted form contained all information required by 10 U.S.C. § 1448(b).

Procurement

B-257515, December 1, 1994

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Carrier liability
- ■ ■ ■ Presumptions

Service member's failure to note visible damage to rear of a television set at the time of delivery is a bar to recovery if the carrier did not note damage to the rear panel of the set on the inventory when it obtained it from the member. The member subsequently notified the carrier that the set did not operate after delivery, and the repair estimate submitted with the claim indicates that damage to the rear panel and components attached to the rear panel was caused by impact.

B-257697.2, B-257973, December 1, 1994

94-2 CPD ¶ 21

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Justification
- ■ ■ ■ Urgent needs

Agency's urgent sole-source acquisition of automatic testers of parachute releases is reasonable, and not the result of a lack of advance planning by the agency, where only one source had previously designed, built, and demonstrated automatic testers; so that as of the time of award it was reasonably found to be the only source capable of satisfying the urgent requirement, which only includes the testers needed immediately while other sources seek qualification.

B-257989, December 1, 1994

94-2 CPD ¶ 21

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Use
- ■ ■ Administrative discretion

Contracting officer's decision to procure services on an unrestricted basis, and not through a small business set-aside, is not an abuse of discretion where the market survey conducted by the agency did not support the expectation that offers from two or more responsible small business concerns would

be received and where the Director of the agency's Office of Small and Disadvantaged Business Utilization concurred with the decision not to set aside the procurement.

B-252879.5, December 5, 1994

94-2 CPD ¶ 219

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest alleging a lack of meaningful discussions is denied where agency led protester into an area of its proposal in need of amplification.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Organizational experience

Protest alleging improper evaluation of corporate experience is denied where agency considered all types of experience listed in the solicitation and protester merely disagrees with the evaluators' conclusions.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Prices

Protest alleging that agency performed an inadequate price analysis is denied where record establishes that the analysis performed was in accordance with the requirements of the procurement regulations.

B-256267.2, December 5, 1994

94-2 CPD ¶ 220

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Where request for proposals stated that technical factors were slightly more important than price, contracting officer properly selected the awardee instead of the protester for award on the basis of the awardee's slightly higher-rated technical proposal and the awardee's lower price which was roughly half of the protester's price.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protest that agency improperly applied unstated evaluation criterion by assessing one particular aspect of offerors' experience is denied where the criterion was encompassed by the solicitation criterion concerning the relevant experience of offerors and subcontractors.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Subcontractors

Protest that agency failed to consider information in protester's proposal concerning subcontractor manufacturing processes is denied where record establishes that agency considered protester's proposal submissions and reasonably evaluated this area as warranting less than a maximum score.

Procurement**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

In evaluation of protester's performance risk, where protester had already submitted its explanation of why a prior contract was terminated and the solicitation advised offerors that agency could consider input from other government sources, agency's determination not to obtain further rebuttal from the protester was reasonable and did not violate agency's obligation to conduct meaningful discussion.

Procurement**Competitive Negotiation**

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Award to offeror who submitted higher-cost, higher technically rated proposal is not unreasonable where solicitation evaluation scheme gives greater weight to technical merit than to cost. Where source selection authority considered all evaluation criteria in reviewing offerors' proposals, ultimate

focus on offerors' experience as key discriminator is unobjectionable and does not evidence that the agency gave undue emphasis to one evaluation factor.

B-258129, December 6, 1994

94-2 CPD ¶ 224

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ GAO review

The General Accounting Office will not question a nonresponsibility determination absent a showing of bad faith by the contracting agency or the lack of any reasonable basis for the determination, since the determination is essentially a matter of business judgment.

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Prior contract performance

In reviewing a nonresponsibility determination based on prior performance, the General Accounting Office will consider whether the determination was reasonably based on the information available to the contracting officer; further, the contracting officer's evaluation to the extent in which a bidder's prior experience is "similar" to the required solicitation work is a judgmental matter within the discretion of the contracting officer.

B-258021, December 7, 1994

94-2 CPD ¶ 225

Procurement

Competitive Negotiation

- Competitive restrictions
- ■ Use
- ■ ■ Propriety

Procurement

Socio-Economic Policies

- Use
- ■ Small business set-asides
- ■ ■ Administrative discretion

Agency decision to conduct a procurement for military family housing maintenance on an unrestricted basis, and not as a small disadvantaged business (SDB) set-aside, was unobjectionable where record shows that, based on review of the procurement history of offers received for the services, inquiry into SDB firms who had requested the solicitation, and review of the Small Business Administration's automated computer system of SDB firms, the contracting officer could not reasonably expect to receive offers from at least two technically capable, responsible SDB concerns at acceptable prices.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Allegation that contracting agency should have rejected low bid as nonresponsive is denied where its face, bid takes no exception to the solicitation's material requirements and unequivocally promises to provide the exact services called for in accordance with all material terms and conditions of the solicitation.

Procurement

Sealed Bidding

- Below-cost bids
- ■ Contract awards
- ■ ■ Propriety

Submission of below-cost bid is not improper; the government may not properly withhold award merely because a responsive bid is below cost.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Oral statements
- ■ ■ Contractors
- ■ ■ ■ Notification

Protester relied on agency's oral explanation on how to prepare its bid at its own risk, particularly where the solicitation cautioned that all inquiries concerning the solicitation must be submitted to the agency in writing and that responses to such inquiries would be provided to all bidders via an amendment to the solicitation.

Procurement

Contractor Qualification

- Licenses
- ■ State/local laws
- ■ ■ GAO review

Whether awardee under invitation for bids for waste disposal services will comply with county ordinance allegedly requiring contractor to enter into a "franchise agreement" with a local government entity is a matter between the contractor and the cognizant state or local authority, not for federal contracting officials to resolve.

B-259262, December 7, 1994

Procurement

Sealed Bidding

■ **Bids**

■ ■ **Late submission**

■ ■ ■ **Acceptance criteria**

■ ■ ■ ■ **Government mishandling**

Bid received late because of bidder's use of an incorrectly addressed, preprinted agency-provider return envelope may be considered since the government's impropriety in furnishing the incorrectly addressed envelope was the paramount cause of the lateness and acceptance of the bid would no compromise the integrity of the bidding system.

B-256666, December 8, 1994

Procurement

Payment/Discharge

■ **Shipment**

■ ■ **Damages**

■ ■ ■ **Evidence sufficiency**

The level of damage to an item of household goods in transit estimated at the time and place (domestic or foreign) of delivery is relevant in establishing whether the damage is sufficient to determine under 49 C.F.R. § 1056.15 that freight charges on the damaged items cannot be collected by the carrier.

B-256695, December 8, 1994

Procurement

Payment/Discharge

■ **Shipment**

■ ■ **Carrier liability**

■ ■ ■ **Burden of proof**

A carrier is not liable for the loss of a down vest and a jacket packed with living room items based solely on a member's statement that he owned the items, that he searched the entire house after the carrier finished packing, and that the vest and jacket were not left behind. This explanation does not constitute a sufficient personal rendition of facts surrounding the tender of the items to the carrier to allow us to conclude that the lost items were tendered with living room items.

Procurement

Payment/Discharge

■ **Shipment**

■ ■ **Damages**

■ ■ ■ **Evidence sufficiency**

A *prima facie* case of carrier liability for damage to two clocks is established where the items were delivered in damaged condition, the shipper has claimed that the damage resulted during the shipment, and the damage is consistent with the items having been improperly packed.

B-257399, December 8, 1994

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Burden of proof

When a *prima facie* case of carrier liability has been established, the carrier's assertion that cartons in which the missing items were packed were delivered in a sealed condition and unpacked by the carrier does not overcome the carrier's liability.

B-257431.7, December 8, 1994

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Subcriteria
- ■ ■ ■ Disclosure

Contracting agency properly may consider offeror's efficiency in performing the required work when evaluating the relative merits of proposals, even where the request for proposals does not specifically list efficiency as an evaluation factor.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation

Contracting agency reasonably rated protester's proposal as acceptable, rather than the higher rating the protester asserts it warranted in four areas, where the record shows that agency evaluation considered information presented in the proposal and the evaluation was consistent with the evaluation scheme set forth in request for proposals.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency conducted meaningful discussions regarding the protester's phase-in plan where the agency advised the protester of deficiencies/weaknesses in its initial plan, the protester made relevant revisions, and the protester received higher ratings on this aspect of its best and final offer.

95-1 CPD ¶ 20

REDACTED VERSION

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation
- ■ ■ ■ Administrative discretion

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Point ratings

Protest that the agency should have increased the protester's management/technical evaluation score to compensate for the upward cost adjustments the agency made in performing a most probable cost analysis is denied, because the request for proposals clearly stated that cost realism and most probable cost assessments would be based on the technical and management approaches proposed by offerors and it's the offeror's obligation, not the agency's, to prepare a full and complete proposal.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost data

Agency properly did not consider cost savings protester alleges could be realized from its proposal to [DELETED], where the agency reasonably determined that the alleged savings were highly speculative.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Contracting agency properly decided to award cost-type contract to the offeror of the higher-rated higher-cost proposal, where the request for proposals stated that technical and management factors were considered more important than cost and the agency reasonably determined that the awardee's technical and management superiority was worth the associated additional cost.

B-258037, B-258037.2, December 8, 1994***

94-2 CPD ¶ 22

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Justification
- ■ ■ ■ Sufficiency

Procurement

Specifications

- Minimum needs standards
- ■ Total package procurement
- ■ ■ Propriety

Agency reasonably justified "bundling" of a guidance system and the missile it serves in procurement based on the need for complete integration of the overall system and the risk to the reliability of the missile if the guidance component were separately procured.

B-258045, December 8, 1994

94-2 CPD ¶ 22

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Bid was properly rejected as nonresponsive where the invitation for bids (IFB) required an enclosure on the sludge dewatering unit and the bidder offered to supply a hood with an open top.

B-258711, B-258711.2, December 8, 1994

94-2 CPD ¶ 22

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

Protest challenging agency's determination that low bidder will be able to supply equipment conforming to the solicitation requirements involves an affirmative determination of responsibility which will not be reviewed by the General Accounting Office absent a showing of possible fraud or bad faith on the part of the procurement officials or that definitive responsibility criteria in the solicitation were misapplied.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Protester is not an interested party to protest alleged agency action preventing the protester from submitting its bid prior to bid opening where the protester's purported bid would not have been in line for award.

B-257451.2, December 9, 1994

94-2 CPD ¶ 230

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Protest against award to other than the low-cost offeror is denied where award to higher-rated, higher cost offeror was permissible under solicitation and agency reasonably determined technical superiority justified payment of small cost premium.

B-258106, December 9, 1994

94-2 CPD ¶ 231

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that agency evaluation of protester's proposal is unreasonable and inconsistent is denied where the agency reasonably concluded that the protester's retirement plan was a strength, but that the specifics of the plan were not sufficiently advantageous to ensure that the protester would be able to hire and retain personnel.

B-249040.2, December 12, 1994

94-2 CPD ¶ 237

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

Protester's claim for reimbursement of the cost of employee time and company expense in preparing a proposal and pursuing a protest is allowed where based upon actual rates of compensation plus reasonable overhead.

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

Agency properly found that pre-construction architecture costs incurred several months prior to the time the protester first expressed an interest in the procurement are not reimbursable as proposal preparation costs.

Procurement

Bid Protests

- Preparation costs
- ■ Agency-level protests

Bid Protest Regulations do not contemplate the award of costs associated with pursuit of claim for proposal preparation and protest costs before the contracting agency.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Administrative remedies

Costs associated with pursuit of claim before General Accounting Office are not recoverable where record shows that agency proceeded expeditiously in responding to the claim.

B-256556.2, December 12, 1994

94-2 CPD ¶ 232

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision denying protest is denied where the protester does not show that the decision contained any errors of fact or law or present information not previously considered that warrants reversal or modification.

B-257731.2, B-257731.3, December 12, 1994

95-1 CPD ¶ 233

Procurement

REDACTED VERSION

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency held inadequate discussions by failing to advise protester of weaknesses in its proposal and by asking significantly more questions of the intended awardee is denied where the record shows: (1) that the agency, the National Aeronautics and Space Administration, was conducting the procurement under its alternate source selection procedures, which essentially limit discussions to proposal clarification after which a final contract is negotiated with a selected offeror

(2) that the discussions with both offerors were limited to clarification questions, as required by the alternate procedures, and neither offeror was unfairly helped by the questions; and (3) that the greater number of questions directed to the intended awardee were not unfair to the protester, but were the result of a greater need for clarification of the awardee's proposal.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Protest that agency improperly evaluated technical proposals and impermissibly selected the offeror with higher proposed costs is denied where the record indicates that the agency technical evaluation was reasonable and consistent with the solicitation's evaluation criteria, and where the agency reasonably concluded that the awardee's superior proposal warranted its slightly higher cost.

Procurement

Competitive Negotiation

- Alternate offers
- ■ Rejection
- ■ ■ Propriety

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety
- ■ ■ Best/final offers
- ■ ■ ■ Alternate offers

Agency is not required to evaluate an alternate proposal first submitted in response to the agency's request for best and final offers where the record shows that the proposal was technically unacceptable on its face, and discussions regarding the acceptability of the proposal would have required reopening negotiations.

B-258123, December 12, 1994

94-2 CPD ¶ 238

Procurement

Sealed Bidding

- Invitations for bids
- ■ Evaluation criteria
- ■ ■ Samples

Agency decision to require bid samples in lieu of technical proposals and first article testing is reasonable where: (1) solicitation contained detailed drawings and technical specifications enabling bidders to manufacture noncomplex component parts; and (2) agency did not have adequate specifications to describe facility of use characteristics it required in the components.

Procurement

Sealed Bidding

- Bids
- ■ Samples
- ■ ■ Submission time periods
- ■ ■ ■ Adequacy

Protest challenging 30-day time limit for preparation and submission of bid samples is denied where (1) agency has presented un rebutted evidence that 30 days constitutes reasonable and sufficient time within which to produce non-complex component parts; (2) several offerors have complied with 30-day submission requirement under previous procurements; and (3) as a result of pre-solicitation notice published in the *Commerce Business Daily*, prospective bidders actually had 45 days to prepare a bid sample.

B-258142, December 12, 1994

94-2 CPD ¶ 23

Procurement

Small Purchase Method

- Quotations
- ■ Alternate offers
- ■ ■ Rejection
- ■ ■ ■ Propriety

Agency rejection of protester's offer of alternate product was reasonable and consistent with solicitation warning that offerors proposing an alternate product which was used or approved by different contracting activity should furnish data required to demonstrate that the product offered was equal to the product cited in the purchase item description because the procuring agency might not have access to the records of those other activities.

B-258284, December 12, 1994

94-2 CPD ¶ 23

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Terms
- ■ ■ ■ Deviation

Awardee's failure to submit requested equipment history with bid does not render bid nonresponsive where history was not necessary to evaluate bids, awardee was bound to perform in accordance with the solicitation, and awardee did not gain any competitive advantage over other bidders who submitted the information in question.

B-258518, December 12, 1994

94-2 CPD ¶ 236

Procurement

Sealed Bidding

- Hand-carried bids
- Late submission
- Acceptance criteria

Where invitation for bids listed two different bid opening times, agency was not required to consider bid which was hand delivered after the agency had proceeded to open bids at the earlier of the two times listed, where the protester had failed to inquire of the contracting agency, prior to bid opening which of the bid opening times listed in the solicitation package was correct.

B-259492, December 12, 1994

94-2 CPD ¶ 236

Procurement

Bid Protests

- GAO authority

General Accounting Office is without jurisdiction to consider a protest of a procurement by the Clerk of the U.S. House of Representatives because the House of Representatives is not a federal agency for bid protest purposes.

B-258093, December 13, 1994

94-2 CPD ¶ 239

Procurement

Special Procurement Methods/Categories

- Architect/engineering services
- Contractors
- Evaluation

Allegation that agency improperly eliminated protester from further consideration in architect-engineer procurement is without merit where record shows that agency's actions were consistent with applicable procedures, and the protester was eliminated for numerous valid reasons.

B-257431.9, December 14, 1994

95-1 CPD ¶ 77

Procurement

REDACTED VERSION

Competitive Negotiation

- Offers
- Evaluation errors
- Evaluation criteria
- Application

Protest allegation that the agency used evaluation factors that were not set forth in the request for proposals (RFP) to evaluate the protester's proposed key personnel and meal card management system is denied where evaluation of these aspects of proposals reasonably relate to the RFP's stated evaluation criteria.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Agency was not required to hold discussions regarding either protester's proposal [DELETED] awarded the contract, or its proposed [DELETED], where the proposal was rated as acceptable better on all evaluation factors/subfactors under which these aspects were evaluated; agencies are required to point out elements of proposals that receive less than full evaluation credit.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

Protest allegation that the agency did not consider the protester's 24 years of experience as incumbent contractor in evaluating the protester's prior [DELETED] experience is denied where the agency considered the protester's previous tenure as incumbent contractor and other experiences set forth in the protester's proposal and reasonably evaluated this aspect of the proposal [DELETED]; the protester's mere disagreement with the agency's evaluation provides no basis for finding the evaluation unreasonable.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Contracting agency properly decided to award cost-type contract to the offeror of the higher-rate higher-cost proposal, where the request for proposals stated that technical and management factors were considered more important than cost, and the agency reasonably determined that the awarded technical and management superiority was worth the associated cost.

B-253492.6, December 15, 1994***

94-2 CPD ¶ 24

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protest challenging agency's technical evaluation of proposals is sustained where the evaluation was neither reasonable nor consistent with the solicitation, and the errors in the evaluation affected the outcome of the competition.

Procurement

Competitive Negotiation

- Requests for proposals
- Government estimates
- Disclosure

Agency is generally not required to disclose to the offerors the staffing estimates used to evaluate technical and cost proposals where the solicitation stated that staffing would be evaluated.

Procurement

Competitive Negotiation

- Contract awards
- Administrative discretion
- Cost/technical tradeoffs
- Technical superiority

Under a solicitation for base operations and support, which accorded slightly more importance to technical factors than cost, an agency reasonably selected the highest-rated offeror, which received a score of 82 and had the third lowest evaluated probable cost of \$278 million, instead of any of the other four competitive range offerors, whose scores ranged from 78 to 80, where the agency reasonably found that the high technical score represented real technical superiority, particularly with regard to the critical technical area of staffing, that offset the possible cost savings associated with lower-rated offerors.

Procurement

Competitive Negotiation

- Requests for proposals
- Government estimates
- Disclosure

Agency properly used the staffing estimates contained in its independent government estimate to evaluate technical and cost proposals where it also took into account the individual offerors' particular technical approaches.

Procurement

Competition Negotiation

- Discussion
- Adequacy
- Criteria

Discussions on staffing were meaningful where each offeror was generally apprised of the particular deficiencies, excesses and weaknesses with regard to staffing; agency is not required to disclose government staffing estimates during discussions.

B-257735.3, December 15, 1994

94-2 CPD ¶ 24

Procurement

Bid Protests

- GAO procedures
- ■ Administrative reports
- ■ ■ Comments timeliness

Prior dismissal of a protest is affirmed where the protester failed to file with the General Accounting Office within 10 working days after its receipt of the agency report its comments on the report or its expression of its continued interest in the protest.

B-258089, December 15, 1994

94-2 CPD ¶ 24

Procurement

Competitive Negotiation

- Offers
- ■ Late submission
- ■ ■ Acceptance criteria

Contracting agency properly rejected late proposal where offeror was the paramount cause of late delivery, even though contract specialist may have given unclear or incorrect directions.

B-258178, December 15, 1994

94-2 CPD ¶ 24

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Signatures

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Integrity certification
- ■ ■ ■ Bids

Protest that agency improperly rejected bid as nonresponsive because individual executing certificate of procurement integrity did not have authority to bind firm is denied where agency obtained dispositive information from protester regarding nature of individual's authority shortly after bid opening which showed that the individual, in fact, did not have authority to bind firm.

B-258787, December 15, 1994

94-2 CPD ¶ 24

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest that the low bid received by the agency in response to an invitation for bids (IFB) providing for the award of an indefinite delivery/indefinite quantity contract should be rejected as materially unbalanced is untimely when filed after bid opening where the protest is based on an allegation that the estimates set forth in the IFB for some line items were defective because they were inconsistent with other terms of the IFB.

B-257071.2, December 16, 1994***

94-2 CPD ¶ 24

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Criteria

Procurement

Contractor Qualification

- Responsibility
- ■ Financial capacity
- ■ ■ Contractors

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Negative determination
- ■ ■ ■ GAO review

Protest challenging nonresponsibility determination on ground that agency's alleged failure to consider protester's financial information resulted in Small Business Administration's failure to receive vital information bearing on protester's financial capability is denied where: (1) small business protester failed to respond to three separate requests by contracting agency for financial information; and (2) Small Business Administration conducted its own investigation before affirming agency's determination that protester was nonresponsible.

B-258180, December 16, 1994

94-2 CPD ¶ 24

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Invitations for bids
- ■ ■ ■ Identification

Bid was properly rejected by agency as nonresponsive where accompanying bid bond reference incorrect solicitation number of an ongoing procurement for similar construction work, and the bond penal amount exceeded the required indemnification of 20 percent of the total bid price.

B-257125.2, December 19, 1994

94-2 CPD ¶ 24

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Proposal was properly excluded from competitive range where agency reasonably concluded the protester's technical proposal contained informational deficiencies so numerous that it did not demonstrate that its offered equipment could perform as required, and thus had no reasonable chance for award; agency was not required to attempt to remedy deficiencies by means of clarifications or discussions, since the scope and range of deficiencies rendered proposal so materially deficient that major revisions and additions would be required to make it acceptable.

B-257985.2, December 19, 1994

94-2 CPD ¶ 24

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation errors
- ■ ■ ■ Allegation substantiation

Protest against agency cost realism analysis is denied where agency reasonably determined the awardee's proposed price was based upon realistic costs for the work to be performed and reflected a clear understanding of the solicitation requirements; although the awardee's price was significantly below the government estimate, the protester's price was also significantly below the estimate, and the estimate reflected to some extent a prior sole-source contract with a contractor located in a high cost area and paying higher labor rates and subcontractor costs.

B-258149, December 19, 1994

94-2 CPD ¶ 249

Procurement

Contract Management

- Contract modification
- ■ Cardinal change doctrine
- ■ ■ Criteria
- ■ ■ ■ Determination

Agency's decision to procure services under one firm's existing contract was unobjectionable where the record shows that services are within scope of that contract.

B-257292.7, December 20, 1994

Procurement

REDACTED VERSION

Bid Protests

- Dismissal

Protest raising the same issues as those resolved in a recent decision on a protest by the same protester is dismissed as no useful purpose would be served by further consideration of the protest

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

In reviewing protests concerning the evaluation of proposals, the General Accounting Office will examine the agency's evaluation to ensure that it had a reasonable basis. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable.

Procurement

Competitive Negotiation

- Contract awards
- ■ Initial-offer awards
- ■ ■ Propriety

Military agency may make award on the basis of initial proposals and not conduct discussions where, as here, the solicitation advises offerors of the agency's intent to do so, and the contracting officer determines that discussions are not necessary. The contracting officer has discretion to decide whether or not to hold discussions; the General Accounting Office will review the exercise of that discretion to ensure that it is reasonably based on the particular circumstances of the procurement.

Procurement**Bid Protests****■ GAO authority**

General Accounting Office will not consider a protest that the contracting agency should have requested the awardee to verify its offer due to a mistake in the offer since it is solely the responsibility of the contracting parties to assert rights and bring forth the necessary evidence to resolve mistake questions.

Procurement**Competitive Negotiation****■ Offers****■ ■ Evaluation****■ ■ ■ Technical acceptability**

Protest that awardee's offer should have been found technically unacceptable for failure to understand solicitation requirements based on awardee's alleged failure to include waste disposal fees in its offer for certain line items is denied since contracting agency found that awardee understood the performance requirements of the solicitation, and even if awardee did not understand who was responsible for paying certain disposal fees, that is an insufficient basis to conclude that awardee's proposal was technically unacceptable given the fixed-priced nature of the contract and the fact that the awardee did not take exception to any of the performance requirements.

Procurement**Competitive Negotiation****■ Offers****■ ■ Evaluation errors****■ ■ ■ Evaluation criteria****■ ■ ■ ■ Application**

Protest that contracting agency improperly evaluated protester's technical proposal is denied where evaluation was reasonable and consistent with the evaluation criteria, and the record shows no evidence of agency bias toward the firm.

Procurement**Competitive Negotiation****■ Contract awards****■ ■ Administrative discretion****■ ■ ■ Technical equality****■ ■ ■ ■ Cost savings**

Where proposals are essentially equal technically, cost properly may become the determining factor in making an award decision under evaluation criteria which assigned cost less important than technical considerations.

B-258388, December 20, 1994

94-2 CPD ¶ 25

Procurement

Sealed Bidding

- Bids
- Responsiveness
- Certification
- Omission

Where bid does not include required Certificate of Procurement Integrity, bidder is not committed to certificate's terms and bid must be rejected as nonresponsive.

B-259440, December 20, 1994

94-2 CPD ¶ 256

Procurement

Bid Protests

- GAO authority

The General Accounting Office lacks jurisdiction to decide a protest by an ocean freight carrier against awards of contracts for agricultural commodities for export distribution, even though the agency solicited quotes from ocean carriers under the commodity solicitation and depended in part on those quotes to require delivery of the commodities to a particular United States port which the ocean freight carrier does not serve, because the quotes obtained for ocean freight services under the commodity solicitation do not result in a contract with the agency.

B-259483, December 20, 1994

94-2 CPD ¶ 255

Procurement

Socio-Economic Policies

- Small business 8(a) subcontracting
- Below-cost bids

The requirement that section 8(a) contracts be awarded at a fair market price does not preclude acceptance of a below-cost bid; the fair market price requirement imposes a ceiling, not a floor, for section 8(a) contracts.

B-257627.2, December 21, 1994***

94-2 CPD ¶ 256

Procurement

Competitive Negotiation

- Offers
- Evaluation
- Technical acceptability

Contention that agency improperly accepted two offerors' technical proposals submitted in response to the first step of a two-step negotiated procurement is denied where the record shows that the agency reasonably concluded that the technical proposals met all of the essential requirements of the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation
- ■ ■ ■ Administrative discretion

Procurement

Competitive Negotiation

- Offers
- ■ Price competition
- ■ ■ Adequacy

Protester's challenge that the request for price proposals issued as the second step of a two-step negotiated procurement is flawed for failure to include a cost realism review and for choosing not to consider transition costs to the government as part of the agency's evaluation of prices is denied where the agency reasonably concluded that the presence of adequate price competition precluded the need for a cost realism review, and decided that the effect of considering transition costs would favor the previous incumbent and would hinder competition.

B-258158, et al., December 21, 1994

95-1 CPD ¶ 3

Procurement

REDACTED VERSION

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

While past experience was not explicitly identified in the solicitation as an evaluation criterion, nonetheless properly was considered in evaluating proposals where the solicitation stated that the agency would evaluate past performance, and specifically requested listing of contracts performed during the past 5 years, and information on their relevance to the instant solicitation; relevant past experience was logically encompassed by past performance criterion.

Procurement

Competitive Negotiation

- Offers
- ■ Organizational experience
- ■ ■ Evaluation
- ■ ■ ■ Propriety

Evaluation properly emphasized corporate experience over individual personnel experience; solicitation's explicit request for information on corporate experience should have placed offerors on notice that this area of experience would receive primary consideration.

Procurement

Competitive Negotiation

■ Discussion

■ ■ Determination criteria

Agency was not required to conduct discussions with protester concerning its past experience where agency found protester's experience acceptable—it was merely less extensive than the awardee's—and, in any case, had no reason to believe protester had not provided all relevant past performance information, as required by solicitation, or that protester otherwise could improve its rating in this area.

B-258267, December 21, 1994

94-2 CPD ¶ 257

Procurement

Bid Protests

■ GAO procedures

■ ■ Protest timeliness

■ ■ ■ 10-day rule

Protest against the award of a cooperative agreement under the authority of the Federal Technology Transfer Act (FTTA), 15 U.S.C. § 3710a (1988), is dismissed as untimely where, after filing general protest against use of cooperative agreement instead of competitive procurement, protester was specifically advised by agency that it had acted pursuant to authority under FTFA, and did not protest on this specific basis until more than 10 working days after being so advised.

B-254953.4, December 22, 1994

94-2 CPD ¶ 258

Procurement

Competitive Negotiation

■ Discussion reopening

■ ■ Propriety

In response to the recommendation of the General Accounting Office in a decision sustaining a protest that the agency perform a new cost evaluation and obtain proposal revisions, if necessary; the agency reasonably determined to reopen negotiations with competitive range offerors, notwithstanding the disclosure of the protester's price advantage during the prior protest, where the agency found that the offerors' previously submitted best and final offers (BAFO) may no longer be valid because, since the submission of BAFOs, offerors' labor rates have changed and key personnel proposed by the protester were no longer in the protester's employ but in the awardee's, such that no valid source selection could be based on the BAFOs.

B-258198, et al., December 27, 1994

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Adjustments
- ■ ■ ■ Rates

Agency's upward adjustment of protester's proposed costs to reflect the agency's cost realism analysis of the protester's proposed labor escalation rates and overhead rates was reasonable where protester failed to justify the reasonableness of its rates in its cost proposal and the agency determined that the rates proposed were unreasonable.

Procurement

Competitive Negotiation

- Contract awards
- ■ Initial-offer awards
- ■ ■ Discussion
- ■ ■ ■ Propriety

Agency properly made award based upon initial proposals without conducting discussions where request for proposals advised offerors that the agency intended to award the contract on the basis of initial proposals and the agency reasonably determined, based on the particular circumstances of procurement, that discussions were unnecessary.

B-235558.7, December 28, 1994

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Burden of proof

A carrier is liable for damage to goods occurring during more than 180 days of storage-in-transit (SIT) notwithstanding a regulation providing for the termination of Government Bill of Lading (GBL) shipments in SIT after 180 days, where the carrier: (1) did not notify the government that the carrier was placing the shipment in permanent storage, as required by the GBL; (2) did not annotate inventory upon change of custody, as required by the standard Tender of Service, and (3) billed government for SIT, not permanent storage.

95-1 CPD ¶
REDACTED VERSION

B-257312.2, December 28, 1994

94-2 CPD ¶ 259

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the protester does not show that prior decision denying its protest contained any errors of fact or law or present information not previously considered that warrants reversal or modification of our decision.

B-258204.3, B-258204.4, December 28, 1994

94-2 CPD ¶ 260

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Decision dismissing protest based on agency corrective action is affirmed on reconsideration where there is no showing that prior decision contained errors of fact or law.

Procurement

Bid Protests

- Administrative remedies
- ■ Implementation
- ■ ■ Timeliness

Request for declaration of entitlement to bid protest costs is denied where record shows that agency took reasonably prompt corrective action.

B-258221, December 28, 1994

94-2 CPD ¶ 261

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Protest against exclusion of an offer from the competitive range is denied where record reflects that agency had a reasonable basis for rejecting protester's offer.

Procurement**Special Procurement Methods/Categories**

- Research/development contracts
- Intellectual property
- Use

A contracting agency that has obtained "Greater Rights" to a technical data package (TDP) under research and development contract that defined such rights to include "the right to use, duplicate, disclose the TDP for Governmental purposes only" may properly use the TDP in order to conduct foreign military sale (FMS) procurement, since the FMS program has a governmental purpose.

Procurement**Socio-Economic Policies**

- Small business set-asides
- Use
- Administrative discretion

Agency's decision to set procurement aside for exclusive small business participation is proper where the procurement history shows that four out of five firms that participated under the most recent acquisition for this item were small businesses, where the small business awardee performed the project contract successfully, and where the four small business firms have all requested a copy of the current solicitation.

Procurement**Bid Protests**

- GAO procedures
- GAO decisions
- Reconsideration

Request for reconsideration is denied where it is based on evidence which could have been, but was not, submitted by protester in the course of the original protest.

Procurement**Payment/Discharge**

- Shipment costs
- Additional costs

An October 1992 amendment to the Military Traffic Management Command's Freight Traffic Rules Publication 1A, which discontinued the practice of shipping Department of Defense Unique Commodities and self-propelled vehicles as Freight All Kinds (FAK), cannot be applied retroactively to allow a carrier to charge higher rates for shipments in September 1990, despite the amendment's April 24, 1990, effective date. However, under our prior decision *Tri-State Motor Transit Company*, B-254372 *et al.*, July 15, 1994, when the self-propelled vehicle transported is a wheeled vehicle, FAK rates do not apply because MTMC's letter to the carrier industry dated April 24, 1990, had stated that MTMC no longer would route wheeled vehicles as FAK.

B-257111, December 29, 1994**Procurement****Payment/Discharge**

- Shipment
- ■ Damages
- ■ ■ Repairs

The Coast Guard inspected household goods damaged in a move and based its damage calculations on that inspection and on repair estimates made by a company chosen by the shipper. In the absence of clear and convincing evidence that the Coast Guard acted unreasonably, this Office will not question the Coast Guard's use of that information rather than repair estimates from a company hired by the carrier. Since the Coast Guard properly followed debt collection regulations, this Office will not question its imposition of interest and fees on the carrier.

B-257398, December 29, 1994**Procurement****Payment/Discharge**

- Shipment
- ■ Carrier liability
- ■ ■ Burden of proof

A *prima facie* case of transit loss of a trumpet exists when a member claims that the carrier packed it in a box labeled as "Games" and when, in addition to the claim itself, the member presents a handwritten statement relating facts surrounding his tender of the trumpet to the carrier along with a DD Form 1844 from a move completed the previous year showing that the member owned the instrument.

B-258231, B-258231.2, December 29, 1994**94-2 CPD ¶ 263****Procurement****Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Descriptive literature
- ■ ■ ■ Adequacy

Where invitation for bids required bidders to list model offered for purpose of calculating energy usage factor to be added to bids for price evaluation, and protester's bid listed a model number which does not conform to the specifications, agency properly rejected bid as nonresponsive.

Procurement**Bid Protests**

- GAO authority

Protest challenging rejection of bid for failure to acknowledge solicitation amendments is untimely where not filed within 10 days of notice that agency had rejected bid.

B-258247, December 29, 1994

94-2 CPD ¶ 20

Procurement

Competitive Negotiation

- **Competitive advantage**
- ■ **Privileged information**
- ■ ■ **Disclosure**

Protest alleging that solicitation included protester's proprietary information and placed protester a competitive disadvantage is denied where a substantial portion of the information was public disclosable and release of all the information did not competitively harm the protester.

B-258271, December 29, 1994

95-1 CPD ¶

Procurement

Competitive Negotiation

- **Offers**
- ■ **Acceptance**
- ■ ■ **Propriety**

Protest alleging that the General Services Administration (GSA) improperly is considering offers from American air carriers that participate in the Department of Defense's Civil Reserve Air Fleet (CRA) program and that have code-sharing agreements with foreign airlines is denied since the request for proposals does not preclude the acceptance of such offers and since code sharing has been held not to violate the Fly America Act.

Procurement

Bid Protests

- **GAO authority**

Whether allowing offers from American air carriers that have code-sharing agreements with foreign airlines is consistent with the Department of Defense (DOD) goal of maintaining the U.S. air mobilization base and whether American air carriers that code share with foreign airlines should be allowed to participate in DOD's Civil Reserve Air Fleet (CRAF) program are matters of executive policy to be resolved by DOD and cooperating agencies, such as the General Services Administration rather than through the bid protest process.

B-240327.3, December 30, 1994

95-1 CPD ¶

Procurement

Bid Protests

- **GAO procedures**
- ■ **Preparation costs**
- ■ ■ **Burden of proof**

Protester did not establish that costs claimed to have been paid to an unsalaried consultant and an attorney were related to its pursuit of the protest.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Claim for proposal preparation costs is disallowed where the protester was not awarded proposal preparation costs in the decision sustaining the protest and did not timely request reconsideration of the decision.

B-253128.4, December 30, 1994

95-1 CPD ¶ 7

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Amount determination

General Accounting Office (GAO) Bid Protest Regulations provide for the reimbursement, in appropriate circumstances, of reasonable proposal preparation and protest pursuit costs; all claims for costs are subject to the test of reasonableness, and GAO will not award costs for claims which appear excessive on their face or are otherwise unreasonable.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Amount determination

Contracting agency properly disallowed costs for hours claimed by an individual for protest pursuit costs where the individual failed to keep records of the time spent assisting in the protest and failed to adequately document the claim.

B-257733.2, December 30, 1994

94-2 CPD ¶ 265

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Determination that protester's proposal was unacceptable in the area of quality assurance was reasonable and in accordance with the solicitation where the solicitation required offerors to provide a detailed program addressing strategies for operational accident/incident prevention and demonstrating a thorough knowledge of various types of operational incidents, agency advised protester during discussions that the initial proposal did not demonstrate a thorough knowledge of operational incidents, and the revised proposal did not correct the deficiency.

B-258076.2, B-258076.3, December 30, 1994

94-2 CPD ¶ 20

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Sole-source award of a follow-on contract for highly specialized equipment is unobjectionable where the agency reasonably determined that award to any other source would be likely to cause unacceptable delays in fulfilling the agency's requirements.

B-258246, December 30, 1994

94-2 CPD ¶ 20

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation errors
- ■ ■ ■ Allegation substantiation

Protest that agency cost realism analysis is improper is denied where the record shows that the protester proposed significant reductions in its best and final offer and the agency reasonably determined that many of the reductions were unrealistic; might result in either an inability to hire experienced personnel, or significant cost escalation; and were based on unsupported assumptions.

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